IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.147 OF 2007
WITH
CIVIL APPLICATION NO. 218 OF 2007
IN
APPEAL FROM ORDER NO.147 OF 2007

Kirti Veljibhai Thakkar ....Appellant.

V/s

Brihanmumbai Municipal
Corporation & Anr. .....Respondents.

Mr. Dhananjay J. Halwai i/b M/s. M.P. Vashi & Associates for the appellant.

Mrs. Geeta Joglekar for the respondent - Corporation.

CORAM: A.M. KHANWILKAR, J.
DATE : 27th February, 2007

P.C:

1. Heard Counsel for the parties.

2. Admit. Counsel for the respondent wavies service.

3. As short question is involved, appeal is taken up for final disposal forthwith by consent.

4. This appeal from order takes exception to the judgment and order passed by the City Civil Court, Greater Bombay dated 15/2/2007 in L.C. Suit No.657 of 2007. The appellant filed suit for

declaration and injunction against the respondent - Corporation. The appellant approached City Civil Court on assertion that the Officials of the Corporation are proceeding to take action in respect of the structure occupied by him, referred to in the suit, without taking recourse to statutory remedy. In the suit, the main relief was for declaration that the purported notice issued under the signature of Assistant Engineer (Maintenance) dated 31/10/2006 is bad, illegal and against the provisions of law. During the pendency of the suit, the appellant took out Notice of Motion for interim relief. By the impugned order, the Trial Court rejected the prayer for grant of ad-interim relief during the pendency of Notice of Motion for the reasons mentioned in the impugned order.

5. One of the arguments canvassed on behalf of the appellant is that the communication sent under the signature of Assistant Engineer (Maintenance) dated 31/10/2006 is not a statutory notice. It is therefore asserted that unless the authority issues statutory notice, it was not open to the authority to take any precipitative action against the suit structure. The appellant, even on merits, would rely on several documents to support his plea that the structure is in existence since long and is protected structure.

6. Counsel for the respondent - Corporation fairly accepts that the communication sent under the signature of Assistant Engineer (Maintenance) dated 31/10/2006 is not a statutory notice. If it is so, Corporation will have to take appropriate measures by issuing statutory notice to the appellant and pass such orders as may be warranted after giving an opportunity to the appellant. Until that procedure is complied, it is not open to the Corporation to take any precipitative action against the suit structure. Counsel for respondent fairly accepts this position. Accordingly, this is not only a case for grant of ad-interim relief which has been rejected by the Trial Court, but if this arrangement is accepted by the Corporation nothing would survive for consideration in the suit which is filed by the appellant. Indeed, questions on merits of the claim will have to be considered after statutory notice is issued by the appropriate authority. Those aspects are left open and will have to be decided on its own merits uninfluenced by the observations made in the impugned order and for that matter the present order.

7. Accordingly, this appeal succeeds. Ad-interim order is granted in favour of the appellant, to continue till disposal of the Notice of

Motion. In view of the observations made herein, Counsel for the appellant submits that he will move the Trial Court for necessary orders in the main suit wherein statement of the Corporation can be recorded to dispose of the suit finally.

8. Appeal is disposed of.

9. In view of the above order, Civil Application is disposed of.

A.M. KHANWILKAR, J.